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**HAROLD BAER  
 U.S. DISTRICT JUDGE  
 S. D. N.Y.**

Our ref: 527-06/ROSS

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**VIA FAX NO: 212 805 7901**

The Honorable Harold Baer, Jr.  
 Daniel Patrick Moynihan  
 United States Courthouse  
 U.S. District Court Southern District of N.Y.  
 500 Pearl Street – Room 2230  
 New York, New York 10007

RE: Exmar Shipping N.V. v. Polar Shipping S.A. and Polar Shipping Co. Ltd.  
 06 CV 12991 (IIB)

Dear Judge Baer:

As you may recall, attorneys for the Defendants and we attended a conference before Your Honor on February 7<sup>th</sup> regarding the disposition of \$300,000 currently under attachment and held by the garnishee bank ABN Amro. Opposing counsel requested \$25,000 of the \$300,000 transferred to the Court's Registry and \$275,000 of the withheld funds to be released to the Defendants in exchange for a \$275,000 Steamship Insurance P&I Club Letter of Undertaking (hereinafter "Steamship LOU"). We had no objection to the \$25,000 being transferred to the Court's Registry and our client was willing to accept the Steamship LOU in the sum of \$275,000, provided it contained the customary language and usual undertaking by the P&I Club.

At the conference we maintained that the customary Club LOU calls for the security to be stated in lump sum (i.e. \$275,000, inclusive of interest and costs). Opposing counsel Jeremy Harwood argued that the usual practice was for the Club LOU to break out separately the amount of the claim, interest and cost. In arriving at the \$275,000 figure, the undersigned sent an e-mail to Mr. Harwood, pursuant to his request,

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breaking down how the \$275,000 figure was reached. Attached to that email was my draft LOU which did not break out interest/costs. (Exhibit A).

It is disingenuous for Mr. Harwood to represent to the Court that the usual P&I Club LOU breaks out the claim separately from interest and cost. In fact, the originally drafted and proposed LOU by the Defendant's London solicitors supports our position. Attached is this draft LOU (Exhibit B). This conforms with the customary Club LOU and calls for the security to be "in the sum of US \$ \_\_\_\_\_, inclusive of interest and costs." There is no breaking down of the amount of claim, interest and cost. Furthermore, the draft LOU that Mr. Harwood originally submitted with the Defendant's Rule E(4) Motion did not break out interest and cost.

Prior to joining Blank Rome, Mr. Harwood was a partner at the Law Offices of Healy & Baillic. Enclosed is a LOU issued on behalf of Steamship by Healy & Baillic which set the amount of security in a lump sum, "plus interest, cost and attorney's fees ..." (Exhibit C). It is also important to note that the Steamship fax letter authorizing the issuance of their LOU (Exhibit C) clearly states that it is to be "in the sum of US \$707,819.60, plus such interest, cost and attorney's fees ..." <sup>1</sup>

Lastly, we enclose a few other LOUs which we received or issued on behalf of several P&I Clubs, including Steamship P&I, the West of England P&I, Britannia P&I and the North of England P&I. (Exhibit D). All of these call for the lump sum amount of security "inclusive of interest and cost."

Under the circumstances, we respectfully submit that the "Jeremy Harwood form LOU" is not the usual P&I Club LOU form and is not acceptable with our client. Consequently, we ask that the Court maintain the \$300,000 balance of attached funds with the garnishee bank. If the Defendant wishes to substitute security for the withheld \$300,000, the Federal Rules of Civil Procedure (Maritime Supplemental Rules for Admiralty - Rule L(5) and the Local Civil Rules 65.1.1) provides the appropriate mechanism.

Respectfully submitted,  
FREEHILL HOGAN & MAHAR, LLP

  
James L. Ross

ROSS:cm  
encls.

cc: Blank Rome, LLP  
Attorneys for Defendants  
405 Lexington Avenue  
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Attention: Jeremy J. O. Harwood, Esq.  
Fax: 212 885-5001

*Each side to submit a proposed order no later than Thursday 2/15/07 - Bring to Chambers*  
**RECORDED**  
*Hassan Bani*

<sup>1</sup>The Court should further note that this Steamship fax is attentioned to Mr. Harwood.

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